



The Commonwealth of Massachusetts
Department of Public Safety
Board of Building Regulations and Standards

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Administrator

Date: March 22, 2010

Name of Appellant: Geraldine Conley

Service Address: Donald Solomon, Esq
2001 Beacon St., Suite 214
Boston, MA. 02127

In reference to: 421 East Sixth St (Ward 7)
South Boston, MA. 02127

Docket Number: 10-835

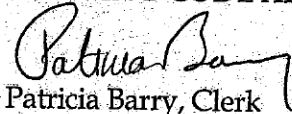
Property Address: 421 East Sixth St (Ward 7)
South Boston, MA. 02127

Date of Hearing: 01-19-10

Enclosed please find a copy of the decision on the matter aforementioned.

Sincerely:

BUILDING CODE APPEALS BOARD


Patricia Barry, Clerk

cc: Building Code Appeals Board
Building Official

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 10-835

Geraldine Conley,

Appellant

v.

City of Boston,

Appellee

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on the Appellant's appeal filed on December 17, 2009 pursuant to M.G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3, the Appellant requested that the Board overturn violation number V000479-2010 issued by the city of Boston for a violation of the 7th Edition 780 CMR 110.1 relative to the property at 421 East Sixth Street, Boston, MA ("Property").

By violation number V000479-2010 ("Violation"), dated November 5, 2009, the City of Boston Inspectional Services Department ("Boston ISD") required Appellant to furnish plans and calculations relative to a drywell constructed under permit number 6491, stop water overflow onto adjoining property, and obtain approval for drain lines from the Boston Water and Sewer Commission ("BWSC").

In accordance with M.G.L. c. 30A, §§10 & 11; M.G.L. c. 143, §100; 801 CMR 1.02 *et. seq.*; and 780 CMR 122.3.4, the Board convened a public hearing on January 19, 2010 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Donald Solomon, Esq. represented the Appellant Geraldine Conley, co-owner of the Property, who testified at the hearing. On behalf of the Appellee, John Lyons and Harold McGonagle, employees of Boston ISD, testified. All witnesses were duly sworn.

Exhibits in Evidence

The following Exhibits were entered into evidence without objection:

- Exhibit 1: State Building Code Appeals Board appeal application form, dated December 17, 2009, including supporting materials.
- Exhibit 2: Boston Redevelopment Authority aerial map of the Property with topographical lines. Printed January 18, 2010.
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- Exhibit 3: Photo of piping system.

Findings of Fact

The following findings of fact are supported by substantial evidence based upon review of the exhibits marked and presented at the hearing as well as witness testimony. The Board finds the testimony to be credible and by and large uncontroverted. The relevant facts are as follows:

1. The Appellant is Geraldine Conley ("Conley"), a co-owner of the Property. (See Exhibit 1).
2. The previous owner of the Property was the Appellant's father and the Appellant has lived at the Property her entire life. (Testimony).
3. The Property consists of a single family structure and a parking area set back from East Sixth Street. (See Exhibit 1-2A, and testimony).
4. The parking area is accessed by a driveway. (See Exhibit 1).
5. The driveway is shared by 421 and 425 East Sixth Street ("Neighboring Property") and the property boundary of the two lots runs down the middle of the driveway. (See Exhibits 1 and 2).
6. The current and previous owners of the Property did not own or control the Neighboring Property in 2004 and do not now. (Testimony).
7. In September 2004, the owners of the Neighboring Property were issued permit number 00182, by the city of Boston, for structural alterations to 425 East Sixth Street, but resurfacing and grading the driveway was not included in the permit. (See Exhibit 1-3).
8. The Appellant alleges that during the permitted work on the Neighboring Property the contractor damaged the structure on 421 East Sixth Street, the parking area (the Property), and the shared driveway. (Testimony).
9. The Appellant filed at least one complaint with the City of Boston regarding damage done to the Property by the Neighboring Property's contractor in conjunction with permit number 00182. (Testimony).
10. Without the knowledge or consent of the owner of the Property the contractor for 425 East Sixth Street resurfaced the shared driveway and the parking area on the Property. (Testimony).
11. On November 5, 2009, Appellant was served with violation number V000479-2010 from Boston ISD, filed October 29, 2009, stating the following: "CHAPTER 110.1 FAILURE TO SECURE PERMIT TO RESURFACE AND REGRADING OF DRIVEWAY INCONJUNCTION WITH 425 EAST SIXTH ST PERMIT #00182 DATED 10/04. WATER RUNOFF IS COLLECTED IN A DAY (sic) WELL CAUSING DAMAGE TO ADJOINING PROPERTY. **REMEDY** FURNISH THIS DEPT. W/PLANS THAT SHOW THE ENTIRE LOAD & THE CALCULATIONS FOR ALL RUNOFF GOING TO DRYWELL CONSTRUCTED UNDER PERMIT #6491 (FOR 425E.6TH ST) & TAKE ALL

APPROPRIATE STEPS TO STOP OVERFLOW ONTO ADJOINING PROPERTY & OBTAIN BWSC APPROVAL FOR OVER TO BE BWSC DRAIN LINES.” (Exhibit 1-1).
12. The Appellant now seeks relief from the Board to overturn violation number V000479-2010.

Discussion

Pursuant to M.G.L. c. 143, § 100, the Board has the authority to decide appeals by those “aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code.” The Appellant is appealing an order by Boston ISD to furnish plans and calculations for work completed on the Property, stop water overflow onto adjoining land, and obtain approval for drain lines from the BWSC; therefore, the Board has jurisdiction over this matter.

The sole issue considered by the Board is whether the Appellant must obtain a permit from Boston ISD for modifications to the Property’s driveway shared with the adjoining property done without her knowledge and consent. The Appellant was cited by Boston ISD for a violation of 780 CMR 110.1 for failing to obtain a permit before the shared driveway was resurfaced and graded. The 7th Edition of the Code, 780 CMR 110.1, states that, “It shall be unlawful to construct, reconstruct, alter, repair, remove or demolish a building or structure...or alter any equipment for which provision is made or the installation of which is regulated by 780 CMR without first filing a written application with the building official.”

No permit was obtained to alter or resurface the driveway and parking area on the Property and the Neighboring Property. In September 2004, the owner of the Neighboring Property obtained permit for alterations number 00182 from the city of Boston. The permit approved alterations to the structure on the Neighboring Property; however, alternations to the driveway were not included.

The alterations to the driveway and parking area were completed without the knowledge and consent of the Property’s owner. Both the driveway and parking area as well as the structure on the Property were damaged during the alterations to the Neighboring Property. As a result of the damage, the Appellant filled at least one complaint with the city of Boston.¹ The Appellant testified that she specifically told the owner of the Neighboring Property that she did not want the driveway

¹ The Appellant testified that she filled more than one complaint with Boston ISD and the Boston Police Department. John Lyons on behalf of the Appellee testified to knowledge of complaints from the Appellant regarding damage and use of the driveway and parking area.

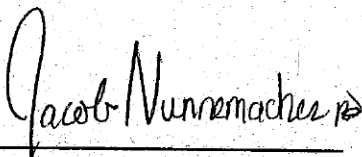
paved. The Neighboring Property's contractor agreed to repair the driveway, parking area, and the house, after the complaints were filled. However, the contractor never consulted with the owner of the Property about paving the driveway and parking area. The Appellee claims the work on the driveway and parking area resulted in water runoff flooding the basement of another property, 454 East Seventh Street. The Board does not need to decide the source of the runoff, because it is not germane to the issue of whether a permit for the modifications to the driveway on the Property.

Section 118.2 of 780 CMR requires building officials to, "serve a notice of violation or order on the person responsible for the ... violation of the provisions of 780 CMR." Because the contractor paved the parking area and driveway without the knowledge and consent of the owner of the Property, the owner of the Property was not responsible for the work. Therefore, the Board finds that the Appellant was not responsible for obtaining a permit prior to the modifications to the parking area and driveway in 2004.

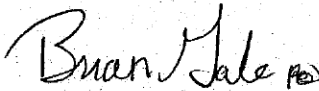
Conclusion

A motion was made by Board Member Jacob Nunnemacher and seconded by Board Member Alexander MacLeod to overturn the violation of the 7th Edition of the Code, 780 CMR 110.1, for failure to obtain a permit before performing work that was done without the knowledge and consent of the Appellant. A Board vote was taken and the motion passed unanimously.

Violation V000479-2010 of the 7th Edition of the Code, 780 CMR 110.1 is hereby **Overtured** as described in the discussion above.



Jacob Nunnemacher



Brian Gale
Chair



Alexander MacLeod

DATED: March 22, 2010

In accordance with M.G.L. c. 30A, §14, any person aggrieved by this decision may appeal to the Superior Court within 30 days of receipt of notice of this decision.